

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of	)	
	)	
FM Broadcast Auction	)	
Scheduled for March 7, 2007	)	AU Docket No. 06-170
(Auction No. 70)	)	
	)	

To: The Wireless Telecommunications Bureau and the Media Bureau

**COMMENTS OF NATIONAL PUBLIC RADIO, INC.**

**Introduction**

National Public Radio, Inc. ("NPR") respectfully submits these Comments in response to the Public Notice, DA 06-1810, dated September 21, 2006, proposing to auction certain FM broadcast construction permits and requesting comment on the proposed auction procedures. For the reasons set forth herein, and as we recently commented in response to the Public Notice announcing Auction No. 68,<sup>1</sup> NPR requests that the Bureaus modify their auction procedures, including public notices, to expressly invite noncommercial educational ("NCE") broadcast applicants to

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<sup>1</sup> Public Notice, DA 06-997, dated August 24, 2006. See Comments of National Public Radio, Inc., AU Docket No. 06-101, filed Sept. 6, 2006. [hereinafter "NPR Auction No. 68 Comments"].

apply for any of the subject construction permits without having to submit minimum opening bids, upfront payments, or filing fees.

NPR is a non-profit membership organization of more than 800 noncommercial educational radio stations nationwide. NPR produces and distributes such noncommercial educational programming as *All Things Considered*, *Morning Edition*, *Talk Of The Nation*, and *Performance Today*. NPR also operates the Public Radio Satellite Interconnection System and provides representation and membership services to its member stations.

### **The Auction Procedures Are Required To Accommodate Noncommercial Educational Station Applications**

As we pointed out in our Auction No. 68 comments, broadcast auctions are open to all applicants seeking to construct commercial and, if otherwise eligible, NCE broadcast stations.<sup>2</sup> The rules further state that

initial and other public notices will contain information about the completion and submission of applications to participate in the broadcast auction, and applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels, as well as any materials that must accompany the applications, and any filing fee that must accompany the applications or any upfront payments that will need to be submitted.<sup>3</sup>

Although NCE station applicants are exempt from, and therefore not permitted to participate in, the actual auctioning of non-reserved broadcast spectrum, an NCE applicant may obtain a construction permit for which there are no competing applications, in certain circumstances via settlement, or when the other mutually

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<sup>2</sup> See NPR Auction No. 68 Comments at 2, *citing* 47 C.F.R. § 73.5002(a).

<sup>3</sup> 47 C.F.R. § 73.5002(a) (emphasis added).

exclusive applications are all for NCE stations.<sup>4</sup> The Commission recognized that such situations do occur, and it specifically sought to preserve opportunities for NCE applicants to obtain non-reserved spectrum without unduly delaying the competitive bidding process.<sup>5</sup>

As with the initial public notice in Auction No. 68, the Bureaus' initial public notice in the above-captioned proceeding is materially deficient in several ways. First, it contains no information about "the completion and submission of . . . applications for noncommercial educational broadcast stations." Second, the discussion of minimum opening bids, upfront payments, and filing fees ignores the fact that an NCE applicant need not pay any minimum opening bid, upfront payment, or filing fee because it is exempt from the actual auction<sup>6</sup> and from filing fees.<sup>7</sup> Third, and as a matter of Commission policy, the auction procedures should openly encourage the submission of NCE applications. In addition to raising revenue for the Federal treasury,<sup>8</sup> the Commission is required to promote the

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<sup>4</sup> Id. § 73.5002(a), (c); id. § 73.7001(b).

<sup>5</sup> In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants, Second Report and Order, 18 FCC Rcd. 6691, 6699-6700 (2003).

<sup>6</sup> 47 C.F.R. § 73.5002(b).

<sup>7</sup> Id. § 1.1114(c).

<sup>8</sup> See 47 U.S.C. § 309(j)(3).

availability of new services and encourage the dissemination of broadcast licenses among a wide variety of applicants, among non-economic goals.<sup>9</sup>

In any event, the Commission's rules require public notice of the eligibility of NCE applicants to submit applications during an auction proceeding. The public notice in this proceeding does not comply with those requirements, and we urge the Bureaus to remedy this deficiency expeditiously. Otherwise, the continuing failure to properly conduct the auction in accordance with the Commission's rules could jeopardize the auction and its results.

### Conclusion

For the foregoing reasons, and as required under the Commission's rules, NPR urges the Bureaus to modify its auction procedures, including its public notices, to encourage noncommercial educational broadcast applications for any of the subject construction permits.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

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<sup>9</sup> 47 U.S.C. § 309(j)(3)(A)-(B).

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October 5, 2006